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In The
Supreme Court of the United States
October Term, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance,

Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHIC SERVICE . . . COGS, a California Corporation,

Appellees.

On Appeal From the United States Court of Appeals For the Ninth Circuit

BRIEF OF APPELLEES TAXPAYERS FOR VINCENT AND CANDIDATES' OUTDOOR GRAPHIC SERVICE . . . COGS

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QUESTIONS PRESENTED

1. Whether Section 28.04 of the Los Angeles Municipal Code is unconstitutional as an overbroad restriction on the First Amendment rights of speech and petition of government.

2. Whether the appellants' enforcement of the ban on temporary political signs, while permitting other types of signs to be posted on public property, constitutes a violation of the First Amendment and Equal Protection Clause of the Fourteenth Amendment.

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BRIEF OF APPELLEES TAXPAYERS FOR VINCENT AND CANDIDATES' OUTDOOR GRAPHIC SERVICE . . . COGS

CONSTITUTIONAL PROVISIONS

1. The First Amendment to the Constitution provides in relevant part:

> **Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances.**

2. The Fourteenth Amendment provides, *inter alia*:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

This action was instituted on March 12, 1979, by the appellees, Taxpayers for Vincent, an unincorporated association supporting Roland Vincent in his bid for election to the Los Angeles City Council, and Candidates' Outdoor Graphic Service ("COGS"), a political sign service company. The complaint sought a declaration that Section 28.04 of the Los Angeles Municipal Code is unconstitutional under the First and Fourteenth Amendments to the United States Constitution. The complaint also sought a permanent injunction against further enforcement of the Code, damages for destruction by defendants of signs owned by appellees, and an award of attorneys' fees (J.A. 1.)

Appellees' motions for injunctive relief were denied. (J.A. 99.) They then moved for an order granting partial summary judgment, reserving the issues of damages and attorneys' fees, and appellants contemporaneously filed their motion for summary judgment.

On July 21, 1980, the district court heard oral argument and ruled for the appellants. (R.T. 1-14.) The court

subsequently filed Findings of Fact and Conclusions of Law and Judgment for defendants, from which the appeal to the Court of Appeals was taken on August 21, 1980 (J.A. 103, 161.)

The Court of Appeals for the Ninth Circuit reversed the judgment of the district court in an opinion filed July 30, 1982 (J.A. 1a) and reported at 682 F.2d 847.

Probable jurisdiction was noted on February 22, 1983.

STATEMENT OF FACTS

Roland Vincent was a non-incumbent and virtually unknown candidate for the Los Angeles City Council in the primary and runoff elections held in April and May, 1979. (J.A. 3, 4.) Taxpayers for Vincent, an unincorporated political association formed to support the candidate, engaged Candidates' Outdoor Graphic Service . . . COGS ("COGS") to post temporary political signs for Vincent's campaign. (J.A. 2, 8.)

COGS, a California corporation, provides to candidates a comprehensive political sign service, which includes design, fabrication, assembly, placement—and removal. (J.A. 145.) COGS has performed political sign services for hundreds of candidates for public office, including former President Ford, Governors Edmund G. ("Pat") Brown and Edmund G. Brown, Jr., U. S. Senator Hayakawa, Members of the House of Representatives and even members of the Los Angeles City Council. (J.A. 146.)

COGS fabricated signs for Vincent that measured 15 inches by 44 inches and read

ROLAND VINCENT — CITY COUNCIL

(J.A. 3.) The signs were constructed of medium-grade card stock. They were looped over "cross arms" supporting utility poles and stapled together at the bottom. (See J.A. 96, 152.) None of the signs was affixed to the vertical shaft of the utility poles.

The appellees' signs were not painted or written on any public property. None of the signs was placed on lifesaving equipment. Neither were they posted on public buildings, landscaped highways or nature preserves. The signs were not affixed to or near any wire or conduit transmitting electrical current; they were not glued, stapled or nailed to any part of the pole, they were out of reach of passers-by; they presented no traffic hazard; and they were designed so they could be removed without damage to the property immediately upon conclusion of the election. (J.A. 145-151.)

Los Angeles authorities informed Vincent and COGS that the signs violated Section 28.04 of the Municipal Code and threatened to place them under arrest if the signs were not removed. (J.A. 15, 23.)

Section 28.04 provides, *inter alia*:

"(a) No person shall paint, mark or write on, or post or otherwise affix, any hand-bill or sign to or upon any sidewalk, crosswalk, curb, curbstone, street lamp post, hydrant, tree, shrub, tree stake or guard, railroad trestle, electric light or power or telephone or telegraph or trolley wire pole, or wire appurtenance thereof or upon any fixture of the fire alarm or

police telegraph system or upon any lighting system, public bridge, drinking fountain, life-buoy, life preserver, life boat or other life saving equipment, street sign or traffic sign."[1]

The policy statement issued by the Police Department provides, *inter alia:*

> "The Los Angeles Municipal Code *prohibits* the unauthorized painting or posting of *any* handbill or sign *upon public* or private property.". (J.A. 16; emphasis added.)

Section 28.04, as interpreted by Los Angeles enforcement agencies, constitutes an absolute ban on the posting of political signs on public property. Under this policy, all signs are prohibited, regardless of size, quality of construction, or method of application; they are barred from all public property of any nature, from environmentally sensitive lawns and gardens, to rights of way adjoining industrial streets.

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[1]The ordinance continues:

"(b) Nothing in this section shall apply to the installation of terrazo sidewalks or sidewalks of similar construction, sidewalks permanently colored by an admixture of the material of which the same are constructed, and for which the Board of Public Works has granted a written permit.

"(c) Any handbill or sign found posted, or otherwise affixed upon any public property contrary to the provisions of this section may be removed by the Police Department or the Department of Public Works. The person responsible for any such illegal posting shall be liable for the cost incurred in the removal thereof and the Department of Public Works is authorized to effect the collection of said cost.

"(d) Nothing in this section shall apply to the installation of any metal plaque or plate or individual letters or figures in a sidewalk commemorating an historical, cultural or artistic event, location or personality for which the Board of Public Works, with the approval of the council, has granted a written permit."

While banning political signs on public property, Los Angeles permits other types of signs to be placed on public property, including: news rack signs;[2] street-spanning banners;[3] plaques identifying an historical, cultural or artistic event, location, or personality;[4] and commercial signs on bus shelters.[5]

SUMMARY OF ARGUMENT

1. Section 28.04 constitutes an absolute ban on the placement of political signs on public property of any nature. Were the ordinance to be interpreted as excluding placement only on those public fixtures it specifically lists, this case would be rendered moot because those fixtures on which the appellees posted their signs are not listed. Moreover, a literal interpretation of the ordinance would be inconsistent with the alleged purpose of the law, as it does not prohibit the placement of signs on aesthetically sensitive public properties. Finally, Los Angeles law enforcement authorities themselves interpret the ordinance as an absolute ban.

2. Open public spaces, such as streets, thoroughfares, and the fixtures located upon them, constitute a tra-

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[2]See Defendants' Answer to Plaintiffs' Interrogatory No. 2, C.R. 23.

[3]Los Angeles Municipal Code Section 62-132 and Defendants' Answer to Plaintiffs' Interrogatory No. 12, C.R. 23.

[4]Note 2, *supra*.

[5]J.A. 157.

ditional public forum. Assuming, *arguendo*, that street fixtures are not an integral part of a traditional forum, they must be deemed opened to political signs because Los Angeles (a) allows other types of signs on such property and (b) has historically acquiesced to the placement of political signs on public property.

3. Los Angeles failed to carry its burden of proving that Section 28.04 is reasonably related to a compelling state interest and is narrowly drafted to achieve its ends. The record does not support Los Angeles' assertion that the ordinance was enacted to advance aesthetic concerns. Assuming it was, aesthetic interests alone do not constitute a compelling state interest for purposes of First Amendment review. Even if aesthetic considerations were deemed a compelling interest, the ordinance is not a reasonable time, place, and manner regulation; it is a blanket prohibition outlawing free speech activity that neither is basically incompatible with the functions of the public fixtures on which they would be placed nor poses any threat to the public health, safety, or welfare.

4. Numerous means are available to Los Angeles to protect itself from potential sign abuse. It may restrict the use of nonpolitical signs and bar the placement of signs on traffic signals or on other objects in a manner that imperils public safety or damages public property. It may require that all signs be removed after the election.

5. Temporary political signs represent an inexpensive and uniquely efficient means of campaigning. However, their effectiveness is dependent upon access to public property for the reason that supporters are often unwilling or unable to post signs on private property.

6. Section 28.04 creates a *de facto* discrimination in favor of those who are allowed to post other types of signs on public property and those who own private property on which signs can be effectively employed. As such, it violates the Equal Protection Clause of the Constitution.

ARGUMENT

A. Section 28.04 Constitutes an Overbroad Restraint on the First Amendment Rights of Speech and Petition of Government.

1. Section 28.04 Can Be Interpreted Only as an Absolute Ban on Signs on Public Property.

Vincent and COGS construe Section 28.04 as an absolute ban on the posting of signs on any public property. The Los Angeles Police Department,[6] amici curiae filing briefs in support of the ordinance[7] and the Ninth Circuit share this interpretation.

Appellants nevertheless appear to argue that the fixtures enumerated in the ordinance on which signs are prohibited are not illustrative, but exhaustive, and that other public places are available for the posting of candidates' signs. Playing their cards close to the chest, they decline to identify what public areas *are* made available for posting political signs. (A.B. 25, 26.)

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[6] J.A. 16.

[7] A. 1. The Court is requested to take judicial notice of the facts contained in the Appendix.

If the City Attorney's strict reading of Section 28.04 is accepted, problems of interpreting the scope of the ordinance arise. If the ordinance literally outlaws only the posting of signs on utility *"poles"* (presumably meaning the vertical structure)[8] and *"wire* appurtenances" (emphasis added), it would not then prohibit the posting of signs looped over cross *bars* in the method employed by Vincent and COGS. (J.A. 96, 147.) In this event, the case is moot.

Assuming, for purposes of discussion, that the ordinance can be read to impliedly prohibit signs on cross bars, it cannot be read to ban the placement of signs on places that are unquestionably not embraced even by implication. For example, Section 28.04 makes no mention of public park grounds, zoos, landscaped promenades, lawns dividing highways, public buildings, or numerous other areas which, by their nature, would seem to warrant the highest degree of protection against sign abuse.

If the ordinance is given the literal interpretation suggested by the City Attorney, it cannot achieve its purported environmental goals. This inconsistency creates doubts as to the scope of its application, rendering it unconstitutionally ambiguous. *Haynes v. Mayor of Oradell,* 425 U.S. 610 (1975).

For their part, the Los Angeles law enforcement agencies have resolved the doubt in favor of an absolute ban of all signs on all public property. (J.A. 16.) So interpreted, the ordinance is unconstitutionally overbroad.

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[8]See, for example, the posters depicted at J.A. 115-124.

2. The Political Sign Is a Mode of Communication Protected by the First Amendment.

The venerable political sign has been used as an inexpensive and effective means of advocating candidates and ballot issues in free societies for centuries; its use in America predates the Constitution itself.[9] Federal and state courts have recognized that political signs, just as handbills, loud speaker trucks, and parades, are fully protected under the First Amendment. *Baldwin v. Redwood City,* 540 F.2d 1360 (9th Cir. 1976) at pages 1367 and 1368; *Verrilli v. Concord,* 548 F.2d 262 (9th Cir. 1977); *Orazio v. Town of North Hempstead,* 426 F.Supp. 1144 (E.D.N.Y. 1977); *Martin v. Wray,* 473 F.Supp. 1131 (E.D. Wisc. 1979); *State v. Miller,* 83 N.J. 402, 416 A.2d 821 (1980); *People v. Middlemark,* 420 N.Y.S. 151, 100 Misc. 760 (1979).

In *Dulaney v. Municipal Court* (1974) 11 C.3d 77, 112 Cal.Rptr. 777, the California Supreme Court observed that the posting of written material was "not unlike other forms of protected expression" and that, therefore, "the posting of notices on utility poles is a form of expression coming within the protective umbrella of the First Amendment." 11 C.3d at 83, 84.[10]

Political signs having qualified as a protected form of speech, it follows that they cannot be banned entirely from public places whose functions they do not jeopardize.

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[9]Davidson, *Propaganda and the American Revolution* (U.N.C. Press 1941).

[10]The *Dulaney* Court was not called upon to decide the extent to which public places must be held open for public use.

3. Public Streets, Sidewalks and Thoroughfares Constitute a Free Speech Forum.

a. Public Streets and Street Fixtures Constitute a Traditional Forum.

In 1937, the mayor of Jersey City sought to close public places to the peaceful exercise of free speech activity. The Court eloquently rejected the attempt:

> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens."
>
> *Hague CIO,* 307 U.S. 496, 515 (1939).

Municipalities are obliged to accommodate to some degree every peaceful means of communication, including such potentially disrupting modes as sound trucks (*Saia v. New York,* 334 U. S. 558 (1948); *UFW v. Superior Court* (1967) 254 Cal.App.2d 768, 62 Cal.Rptr. 567), and large demonstrations (*Cox v. Louisiana,* 379 U.S. 536 (1965).)

The use of private displays on public utility poles during special events is a uniquely American tradition. During the holiday seasons most streets in small and large towns alike are decorated with wreaths, banners and other paraphernalia. Signs advertising county fairs, rodeos, pancake breakfasts, and garage sales have historically been a part of Main Street.

In colonial times, public messages and campaign signs were posted on broadsides located on public property,

typically the town square.[11] As cities grew in size and the town commons lost its significance as a focal point for the staging of public debate, candidates turned to its modern counterparts. In the case of political signs, utility poles and other suitable fixtures have been used at election time to perpetuate the tradition.

Los Angeles concedes, with some qualification, that the fixtures listed in Section 28.04 are part of the streets. (A.B. 26.) It nonetheless asks the Court to finely delineate Constitutional freedoms as they apply to sidewalks, on the one hand, and the fences and poles placed on or adjacent to the sidewalks, on the other. Any such distinction is meaningless. The operative question is whether the mode of speech is or is not basically compatible with the area or type of fixture involved. *United States v. Grace*, — U.S. —, 103 S.Ct. 1702 (1983). See, also, Cass, *First Amendment Access to Government Facilities*, 65 Va. L. R. 1287 (1979).

The authorities relied upon by Los Angeles in support of its argument that political signs can be constitutionally banned from public streets turned on facts that are not present in this case.

In *Lehman v. Shaker Heights*, 418 U.S. 298 (1974) the city sought to raise revenue by renting advertising space in the interior of its public transportation coaches. It

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[11]Bridenbaugh, *Cities In Revolt: Urban Life in America*, 1743-1776 (Alfred A. Knopf, 1955) pp. 190-191. The history of political signs and placards is the subject of an exhibit on display at the National Museum of American History.

excluded political advertising. The Court upheld the policy on the ground that to allow short-term political advertising would jeopardize the program, which depended on the sale of limited space to long-term commercial advertisers. Political advertising was found to be inconsistent with this legitimate commercial enterprise. Moreover, the Court expressly stated that the advertising space, limited as it was to the interiors of only 70 public transportation coaches, was not a "traditional" free speech forum in that "no open spaces, no meeting hall, park, street corner, or other public thoroughfare" was involved. *Id.* at 303. Consequently, the spectre of governmental favoritism in allocating limited space would arise. Here, the property in question is not confined, and no appearance of governmental favoritism can result. See *United States v. Grace, supra,* 103 S.Ct. at 1710.

Similarly, in *Perry Ed. Assn. v. Perry Local Ed. Assn.*, — U.S. —, 103 S.Ct. 948 (1983), the Court denied petitioners the right to invade another discrete communication channel rigidly confined to a specific use. The Perry School District granted the recognized collective bargaining unit for its teachers, "P.E.A.," exclusive right to use the inter-school mail system and expressly precluded the use of mail boxes by other groups, including rival P.L.E.A. The P.L.E.A. did not argue, as do the appellees here, that the forum in question was traditionally open to the public. They asserted instead that the mail system had been dedicated for purposes of teacher communication. However, the Court found that the regulation was necessary to preserve the property " 'for the use to which it is lawfully dedicated.' " (103 S.Ct. at 955; cite omitted.) In

reaching its decision, the Court was careful to reconfirm its holding in *Tinker v. Des Moines School District*, 393 U. S. 503 (1969) to the effect that public property, including schools, must be left open for the expression of political ideas to the extent that the expression does not disrupt the school's normal activities.

The *Lehman* and *Perry* "dedicated system" cases were decided by sharply divided courts, reflecting the difficult balancing of interests involved when the public seeks access to essentially "closed" or inherently limited channels of communication. Conversely, the Court has historically found little difficulty in rejecting government's attempt to foreclose speech in "open" areas. The Court recently voted eight to one[12] in striking down a federal law that prohibited the display of any banner or sign on the Supreme Court grounds, including sidewalks surrounding the premises. *United States v. Grace, supra,* 103 S.Ct. 1702. The Court ruled that "[a] total ban on that conduct [prohibited by the statute] is no more necessary for the maintenance of peace and tranquility than on any other sidewalks in the city." *Id.,* at 1709-1710.

This is an "open space" case. The appellees and other candidates seek to place their signs on publicly owned fixtures that, unlike limited advertising space in public transportation vehicles or interschool system mailboxes, can accommodate this secondary use without prejudice to their primary functions.

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[12]Justice Stevens considered the case moot.

b. Los Angeles Has Opened Sidewalks, Streets and Street Fixtures to Public Use.

Even if it were determined that a rational distinction can be made between public streets and street fixtures, and that the latter are not an integral part of a "traditional forum," Los Angeles has nevertheless opened the fixtures for public use.

(1) The City Permits Commercial and Noncommercial Signs and Banners on Public Streets and Fixtures.

Los Angeles permits various signs to be posted on public property under existing law, including permanent signs designating historical, cultural, or artistic events and personalities (Los Angeles Municipal Code § 28.04(d), J.A. 15); banners that span entire boulevards (Los Angeles Municipal Code § 62.132);[13] signs on news racks; and signs for commercial businesses (C.R. 14, Ex. "A"; C.R. 23, p. 12, lines 13-18).

Los Angeles defends its grant of admittedly "selective [sign] access" to public property on the ground that the city takes steps to assure that the allowed uses do not block pedestrian traffic, "cause hazards over which someone would trip and fall, or interfere with sidewalk maintenance." (A.B. 11.) Similar measures can be taken in regard to political signs. The point is that other forms of expression *are* allowed on public streets with the city's express approval. Having allowed these uses on or over the very objects enumerated in Section 28.04, Los Angeles

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[13]A. 2.

is precluded from closing them to political signs. See *Kash Enterprises, Inc. v. City of Los Angeles* (1977) 19 C.3d 294, 138 Cal.Rptr. 53 where Los Angeles was similarly enjoined from excluding news racks of less established newspapers from its sidewalks, and *Welton v. City of Los Angeles* (1976) 18 C.3d 497, 134 Cal.Rptr. 658, striking down an ordinance which prohibited the distribution of literature, including guide maps to homes of Hollywood stars, from public streets.

(2) The City Has Historically Acquiesced in the Use of Public Property for the Posting of Temporary Political Signs.

Although Section 28.04 has been part of the Los Angeles Municipal Code for at least 36 years, there is no evidence on the record that prior to the events leading to this action it was regularly or effectively enforced.

On the contrary, it can be inferred from the resolution adopted by the City Council in 1947 (J.A. 13-14) that enforcement had become so casual as to require a formal decree reminding candidates of its very existence. It appears that the 1947 resolution was little more than a political gesture to pacify sign opponents, as the record contains no evidence that it moved the authorities to implement a serious enforcement program. While it is true that in the intervening decades the Street Use Inspection Division has had a standing instruction to its employees to remove illegally posted signs and to respond to citizen's complaints (J.A. 39, 41), it is also apparent

that this ordinance is still generally honored only in the breach. The laxity with which Los Angeles has enforced the section is evidenced by the fact that in the fiscal year 1977-78 more than 68,869 signs were posted on public fixtures. (J.A. 42.) The posting of nominally illegal signs is practiced even by the most prominent officials in California, including former Attorney General and present Governor George Deukmejian (J.A. 68), candidates for judicial office (J.A. 62), members of the Los Angeles City Council itself (J.A. 146), and John Van de Kamp, who presided as the Los Angeles District Attorney at the time this action was instituted and who was more recently elected Attorney General, California's chief law enforcement officer. (J.A. 68.)

Although the law has not been consistently enforced, it remains a potential weapon in the hands of incumbent officers to use selectively against challengers. J. Ely, *Democracy and Distrust* (1980).

The appellees do not argue that a municipality should be said to acquiesce in unsanctioned activity that it vigorously and consistently, if not successfully, attempts to police. However, the mere existence of a law on its books does not preclude a finding of acquiescence when it does not appear that the law has been seriously enforced but in fact has been customarily disregarded with impunity even by legislators and law enforcement officers themselves. See, *Commonwealth v. Wilson*, 158 Pa. Super. 193, 44 A. 2d 520 (1945); cf. *Orange County Communications Co. v. City of San Clemente* (1976) 59 C.A.3d 165, 130 Cal. Rptr. 429.

4. Appellants Failed to Sustain Their Burden of Proving That Section 28.04 Is Reasonably Calculated to Protect a Compelling Governmental Interest.

Section 28.04 constitutes a prior restraint against the placement of signs on public property, thus shifting a heavy burden to the appellants of proving the ordinance constitutional. *NAACP v. Button*, 371 U.S. 415 (1963). To vindicate its ordinance, Los Angeles must establish on the record below both (a) that the ordinance is reasonably related to the advancement or the protection of legitimate and compelling state interests, and (b) that the ordinance is drafted in the narrowest possible fashion to achieve its ends. *Grayned v. City of Rockford*, 408 U. S. 104 (1972). The burden is greatest in cases such as this, where the ordinance effects a prior restraint on political speech. *Monitor Patriot Co. v. Roy*, 401 U.S. 265 (1971).

While there are certain legitimate concerns to be advanced by the regulation of political signs, the City of Los Angeles has not made even a token attempt to design its statute to meet the abuses it seeks to prevent.

a. "Aesthetic Concerns," While Deserving of Some Weight, Do Not Constitute a "Compelling Interest" For Purposes of First Amendment Review.

The City of Los Angeles urges the Court to take the dangerous and unprecedented step of elevating "aesthetics" to the status of a compelling state interest for purposes of First Amendment review.

In support of its position, Los Angeles relies entirely on cases that involve either Due Process challenges to zoning laws or First Amendment claims by commercial billboard companies against the exercise of eminent domain powers. (A.B. 16-20.)

In *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), the Court upheld the city's designation of Grand Central Station as an historic landmark against a developer's charge that the action constituted an unlawful taking under the due process clause because it precluded the construction of a proposed office tower on the site. No First Amendment claims were at issue, and the Court confirmed that, as in all land use cases, the Court must defer to the judgment of the local legislative body.

Similarly, in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1981), the Court allowed to stand a zoning ordinance restricting occupancy of residential homes to a single family, defined as two or more persons related by blood, adoption or marriage living together as a single housekeeping unit. Justice Douglas, writing for the Court, was careful to point out that the case involved no "fundamental right." 416 U.S. at 7. Accordingly, the lower standard of review was employed and the ordinance was sustained on the ground that it was not patently unreasonable or arbitrary. 416 U.S. at 8.

In *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981), the Court, acknowledging that by reason of their large size and permanent nature, commercial billboard structures present special problems to the appearance of a community (453 U.S. at 510), was willing to de-

fer to the city's judgment to permit onsite commercial billboards and exclude those placed offsite. *Id.*, 512. However, the court went on to state that "It does not follow . . . that San Diego's general ban on signs carrying noncommercial advertising is also valid under the First and Fourteenth Amendments" (*Id.*, 512-513), and reversed the California Supreme Court decision that had upheld the ordinance primarily on grounds of aesthetics.[14]

In this case, the lower court uncritically accepted defendants' argument that the ordinance was "narrowly tailored" to advance compelling state interests. (J.S. 20a.) Upon closer examination, the Ninth Circuit concluded that Los Angeles had failed to show that those interests, however compelling, were threatened by appellees' signs or that the ordinance could not be more narrowly drafted to provide reasonable access while controlling the anticipated abuses.

To allow a municipality's concern for "aesthetics" to dominate the exercise of political activity is to subordinate the Constitution to the whim and fancy of local officials—many of whom as *incumbents* are likely to find any opponent's sign offensive to the eye. See Costonis, *Law and Aesthetics: A Critique and Reformation of the Dilemma,* 80 Mich.L.R. 355 (1982). That proposition has been consistently rejected by the Court. The leading case, *Schneider v. State,* 308 U.S. 147 (1939),

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[14]*Metromedia, Inc. v. City of San Diego* (1980) 26 C.3d 848. The California Supreme Court took pains to point out that the San Diego ordinance did *not* affect temporary political signs, which were in fact expressly exempted from the regulation, presumably because of the Ninth Circuit's earlier ruling in *Baldwin v. Redwood City. Metromedia, supra* 26 C.3d at 856, n. 2.

overturned a municipal ordinance that prohibited the distribution of leaflets on public streets. In response to the city's argument that its interests in keeping the streets free of litter was sufficient to justify the law, Justice Roberts wrote: "The public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution." *Schneider v. State, supra,* 308 U.S. at 162-163.

b. Los Angeles Failed to Establish That Section 28.04 Was Intended to Advance Aesthetic Interests.

Los Angeles contends that its ordinance reflects a carefully struck balance between First Amendment rights on the one hand and other societal interests, including aesthetics on the other. If such a balance was struck, it was accidental, as there is no evidence in the record that the city council gave any consideration to the First Amendment rights *or* aesthetics in adopting the original ordinance.

In 1947, the Los Angeles City Council passed a resolution instructing the City Clerk to remind candidates and outdoor advertisers of pre-existing laws restricting political posters and of the penalties imposed for their violation. (J.A. 13-14.) The text of the resolution and the ordinance relates solely to (1) trespass on private property[15] and (2) public safety in regard to use of certain

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[15]"WHEREAS, private property owners . . . have bitterly, and rightfully, complained against defacement of their property with campaign posters . . ." (J.A. 13.)

publicly owned property.[16] There is nothing on the record that the city council had given any attention to aesthetics. The council conducted no study regarding the visual impact of temporary political signs. It made no findings concerning "visual blight."

Similarly, nothing on the record shows that the City Council gave any consideration to First Amendment issues either in 1947 or any time since, or that it made any finding that satisfactory alternative means of communication are available to those wishing to convey political ideas and solicit votes.

In short, Los Angeles asks this Court to give deference to legislative processes that never took place and to findings that were never made.

c. Assuming, Arguendo, That Section 28.04 Was Intended to Protect Aesthetics, It Is Not Reasonably Related to That End.

Los Angeles, like other major industrial cities in America, is a "Stormy, husky, brawling"[17] metropolis. It sprawls over 465 square miles (A. 4), is populated by 3 million people (*id.*), and is alive with commerce and industry.

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[16]The ordinance enumerates areas on which signs would be obviously improper (such as the surfaces of sidewalks, crosswalks, curbs, poles, and drinking fountains) or patently dangerous (such as hydrants, fire alarms, life saving equipment). (J.A. 14-15.)

[17]Carl Sandburg, "Chicago" (1916).

Although many parts of the city have distinct charm, Los Angeles cannot realistically be described as a picturesque seaside village whose fragile beauty could be seriously jeopardized by temporary campaign posters.[18] Some downtown traffic arteries rival Las Vegas for visual stimulation, with signs advertising gas stations, motels, fast food stands, laundromats, used car lots, theaters, and adult bookstores. (See, J.A. 115, 116, 119 and 137.) Virtually all these signs are illuminated; some are even animated. While affixed to private property, they typically extend to the airspace over public rights of way and are therefore as visible to passersby as they would be if placed on public property. (*Id.*)

Whatever rationale Los Angeles may have for precluding signs on safety-related fixtures, it has never satisfactorily explained how a sign placed on other public property is any more an eyesore than one placed on adjoining private property. It cannot be said that utility poles themselves have any particular aesthetic quality that is threatened by signs; they have in fact been the *target* of clean-up campaigns. *City of New Haven v. Chandler,* 446 F.Supp. 925 (D. Conn. 1978).

The humble political sign plays a harmless role in this carnival-like scene. Such signs certainly do not present the catastrophic problems of which appellants and

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[18]This is not to imply that seaside villagers do not also have a constitutional right to post signs. However, aesthetic considerations may be given greater weight where it appears that signs may substantially impair the very character of an entire community resulting in economic hardship. However, in no circumstance would an absolute ban be acceptable.

their amici so gravely warn.[19] While the city conjures a grim scene of signs "plastered" in stupefying numbers throughout town, the fact is that the appellees' signs removed by Los Angeles were posted at a ratio of only 1 per 135 street miles. It is unrealistic to contend that candidates could "inundate" Los Angeles' 6,477 miles (A. 4) of surface streets even if they had a wish to do so.

The visual nuisance is not only relatively minor, it is short-lived. Once the election is over, the signs are subject to removal, while the permanent signs (which inexplicably do not offend the city's sense of aesthetics) remain year round. This point is vividly illustrated in exhibits produced by Los Angeles depicting large permanent billboards looming in the background behind small temporary signs. (J.S. 76, 119 and 121.)

The Ninth Circuit recognized this inconsistency in Los Angeles' position. It found nothing in the record to support the city's contention it had developed any serious or comprehensive plan to confront the real problems of aesthetics or that the decision to select out political signs for treatment was reasonably calculated to serve the stated purpose. (J.A. 9a-10a; 682 F.2d at 851, 852.)

Los Angeles misconstrues the appellate court's comments as applying an allegedly novel test advanced by Justice Brennan in his concurring opinion in *Metromedia* (A.B. 19.) Justice Brennan simply made the commonsense observation that the judiciary is not required to mechanically accept the city's rationale for abating bill-

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[19]Los Angeles goes so far as to compare cardboard signs with toxic waste. (A.B. 19.)

boards at the expense of First Amendment freedoms when it contemporaneously sanctions the proliferation of other, more offensive forms of "visual clutter." (*Metromedia*, 453 U.S. at 530-31; J.A. 9a-10a.) The same point was made by Justice White in his opinion for the plurality. *Metromedia, supra*, 453 U.S. at 490.

Few would argue that political signs necessarily add significantly to the beauty of any landscape—although the point is debatable in certain downtown areas of some cities —but a too fastidious concern for aesthetics cannot be allowed to eclipse fundamental rights essential to the operation of a democracy. "'Annoyance and inconvenience . . . are a small price to pay for the preservation of our most cherished right." *Wirta v. Alameda Contra Costa Transit District* (1967), 68 Cal. 2d 51, 62; *Schneider v. State, supra*, 308 U.S. at 162. However, the constitutional interest in "uninhibited, robust and wide open debate"[20] and "aesthetics" should not be considered necessarily at war with one another. Street graphics, as City Planner Ewald notes in the passage quoted by appellants, "are a good indicator of what people think of themselves. . . ." (A.B. 17.) Political signs, placed temporarily at election time, tell us that the community has a healthy respect for democracy.

5. Los Angeles Can Protect Itself Against Sign Abuse by Narrower Means.

Although Los Angeles struggles to defend Section 28.04 as a reasonable time, place and manner regulation of political signs on public property (A.B. 12), it is apparent that the ordinance is not regulatory in any sense; it is an

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[20]*New York Times v. Sullivan*, 376 U.S. 254, 270 (1964).

unqualified prohibition of signs on all public property, at all times, in all places, in any manner.

The appellants and supporting amici next contend that they have no choice but to abandon their streets to the unregulated use of political signs, or to exclude them altogether. (A.B. 28.) The district court accepted the argument, finding that while signs of the type used by Vincent posed no serious threat to the city, allowing *any* signs would necessarily sanction the unrestrained and irresponsible "posting" of signs of every description on all property in all parts of town. (J.S. 18a.) The ruling in effect attempted to preclude a valuable means of political expression merely because there existed a potential for abuse. See, *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

The Ninth Circuit rejected the lower court's findings as speculative. It noted several ways by which the city can regulate signs so as to accommodate the public's interest in free speech on the one hand, and environmental integrity and public safety on the other, and found that Los Angeles had failed to demonstrate why measures short of an absolute ban were unacceptable. (J.S. 12a.)

a. Aesthetics

Los Angeles' own experts do not subscribe to the City Attorneys' argument that a total ban on temporary political signs to control the alleged problems is necessary. The Director of City Planning, who in light of his extensive involvement in municipal legislation presumably appreciates the distinction between regulation and outright prohibition, goes only so far as to state that *"Where unregulated,* signs are often excessive in number, excessive in informa-

tion, located in inappropriate locations arrayed in a disorderly manner, and . . . constitute a blighting influence. . . ." (J.A. 37-38; emphasis added.) The Director tacitly admits that sign programs can be regulated in a manner so as to avoid such excesses.

Numerous methods for preventing sign abuse are available to Los Angeles. It may impose reasonable regulations on the size, design and construction of posters. (J.S. 11a.) It can institute cleanup and removal requirements or provide more stringent regulations for areas most in need of protection, such as parks and public landscaped areas. (*Id.*) Los Angeles may implement reasonable permit systems or require that a local campaign representative assume responsibility for the signs.

Los Angeles may severely restrict signs that do not enjoy the same degree of First Amendment protection that political signs command. *Metromedia, supra,* 453 U.S. at 513; *Young v. American Mini Theatres,* 427 U.S. 501 (1976). A survey conducted by Los Angeles to ascertain the number of signs posted illegally during the two-month period immediately preceding the state primary elections in June 1978 (J.A. 42), when the number of political signs could be expected to be at its maximum, showed that 20,021, or 81% of the 24,724 signs were commercial posters for such attractions as "Disco Fever" (J.A. 66), "Beatlemania" (J.A. 65), and "Harold Melvin and the Blue Notes." (J.A. 62.) The more intensive sign campaigns were staged by these commercial interests: "Shrine Auditorium," 393 signs (J.A. 52 and 58); "UCLA Mardi Gras", 1257 signs (J.A. 47, 49, 53 and 56); and "Yoga Training," 120 signs (J.A. 59.) Only 4703 signs were political signs. Accord-

ingly, the city could relieve itself of the vast majority of enforcement problems by outlawing commercial signs while still allowing political posters during the relatively brief periods in which they are present.

The posters depicted in the photographs that accompany the survey grossly misrepresent the type of sign posted by the appellees. First, they are not signs at all, but rather 8 x 11 inch flyers stapled onto poles and light standards. (J.A. 75, 76, 79-86.) Second, with the exception of the two signs at J.A. 136 and 137, the only political signs represented are those propped up against a pole (J.A. 88), placed on a no-parking standard (J.A. 89) or lying on a front lawn. (J.A. 91.) None of the appellees' signs was posted in these ways and appellees do not contest the city's right to prohibit such placements.

To a large degree, political sign campaigns are self-regulating. Candidates post signs to win votes; they avoid posting signs in such volume or in a manner as to alienate the electorate. The stronger the peoples' pride in their community, the more likely the candidates are to use discretion in their use of political signs. In leafy suburban communities, they will predictably use fewer, smaller signs, particularly because they will not be competing for attention with larger garish commercial signs that prevail downtown. Candidates who violate this rule will be taught their lesson at the voting booth.

b. Traffic Safety and Property Maintenance

Los Angeles contends the ordinance is necessary to assure traffic safety and to keep public property free of obstacles that would impede maintenance or repair. These interests are unquestionably substantial. (*Metromedia,*

supra, 453 U.S. at 508-509.) However, the ordinance could be more narrowly drawn to achieve these ends.

The district court rejected the city's contention that an absolute ban is required to assure traffic safety. The city did not and could not produce evidence that all signs, whatever their size and however placed, necessarily constitute driving hazards. The appellees have never contended that they are entitled to post signs that threaten public safety. (J.A. 148.)

The district court found that utility repairmen could be impeded from performing their tasks safely if poles were covered with political signs. Again, the appellees concur in this general observation, but the question here is whether signs looped over cross arms of utility poles or fences, or at other places out of harm's way, can be constitutionally barred by the ordinance. The Court made no finding that Vincent's signs presented any difficulty to linesmen. Defendants themselves conceded in answers to interrogatories that they did not.[21]

Because Los Angeles admits that not *all* signs present safety hazards, it cannot logically argue that an ordinance banning all signs is narrowly drawn to prevent such hazards. Because less restrictive methods are available to prevent the dangers contemplated, the ordinance must be found unconstitutional as an overbroad restraint. *Healy v. James,* 408 U.S. 169 (1972).

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[21] "*Interrogatory No. 11:* State whether the defendants contend that the sign posted on behalf of Roland Vincent depicted in Exhibit A of the Canterbury Declaration presents any of the 'overhead troubles' described [by the defendants].

"*Answer:* No." (J.A. 153-154.)

6. Los Angeles Is Not Entitled to Compel Candidates to Use Inferior Alternatives to Political Signs.

The district court found the appellees' right to post signs is not substantially abridged because they are free to post the signs on private property. (J.A. 18a.) This court has rejected similar arguments in other cases. "It goes without saying that 'one is not to have an exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.'" *Grayned v. City of Rockford, supra,* 408 U.S. at 118, note 40, quoting *Schneider v. State, supra,* 308 U.S. at 163. The California Supreme Court has also ruled that the availability of other forums "is wholly irrelevant" when considering the propriety of a prohibition on a particular forum. *Wirta v. Alameda Contra Costa Transit District, supra,* 68 C.2d 51, 59. This rule obtains even where it is conceded (as it is not here) that the alternative might be equally as effective as the closed forum. *In re Hoffman* (1967) 67 C.2d 854, 64 Cal.Rptr. 97. In *Baldwin v. Redwood City, supra,* the defendant's ordinance prohibited the posting of political posters in residential areas. The court rejected the city's argument that the right was protected by the ability to post signs in commercial and industrial zones, ruling in effect that "spot zoning" an entire area from First Amendment expression is invalid on its face.

Neither can political candidates be precluded from posting temporary signs on public property simply because alternative *means* of communication are available to them. Books, pamphlets, leaflets, political signs, loud speakers, television, radio spots, direct mailings, telephone campaigns all have their own communicative value. Some

methods seek only to convey a simple, direct message, *e. g.*, "Vote for Jones"; others are used to expand issues or defend positions. See, H. Gilbert, *Popular Government In America* (Atherton Press 1968) at 82 *et seq.* Los Angeles' argument, taken to its logical extreme, would permit the banning of all but one method of speech on the ground that an "alternative" remains.

Los Angeles misreads the cases it relies upon in support of the notion it can force the appellees to use alternative means of communication. *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1979), for example, did not hold that Consolidated could be required by the Commission to abandon its use of billing enclosures because other means of communication were available to it. The *Consolidated* court ruled the opposite, explaining that the city's regulation of a particular form of speech must leave an alternative *within the forum in question.* To illustrate the point, the Court cited *Cox v. New Hampshire*, 312 U.S. 569 (1941), holding that the city could regulate the times and places of parades, provided it allowed parades to be held on its streets.

A second variation of alternative means doctrine was developed in the "company town" and shopping center cases in the 1960's. *Marsh v. Alabama*, 326 U.S. 501 (1946); *Amalgamated Food Employees Union v. Logan Valley Plaza*, 391 U.S. 308 (1968). But see, *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).[22] In *Marsh* the Court held that a Jehovah's Witness had the right to distribute leaflets on

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[22] *Lloyd* acted to limit the doctrine in the shopping center context.

streets and sidewalks owned by a corporation because they were the functional equivalent of a public forum.

The premise underlying *Marsh* is that public property must always be kept open to compatible speech activities, and that in some circumstances certain *private* property must be made available when alternative p olic spaces are not available. Los Angeles turns the rule on its head, arguing that citizens may be barred from public property because private property is available to them. Here, the Ninth Circuit held it is the *city* that should demonstrate it has unsuccessfully attempted alternative means of regulation short of an absolute ban before it is entitled to relegate candidates to more expensive and less effective means of political expression. J.S. 11a; 682 F.2d at 852; citing *Grayned v. City of Rockford, supra,* 408 U.S. at 115-116. See, also, *Linmark Associates, Inc. v. Willingboro,* 431 U.S. 85 (1977), holding that the municipality could not ban "For Sale" signs to discourage the flight of white homeowners when alternative measures less threatening to First Amendment rights were available.

Los Angeles suggests that because political signs are "different" from other forms of protected speech, it follows that an absolute ban against them is justified. There are indeed many differences between political signs and other forms of speech that depend on the use of public property for their effectiveness, but on balance those differences would seem to favor political signs. Unlike leaflets and handbills, which are frequently discarded by their recipients, political signs are less likely to litter city streets; in contrast to parades, signs do not disrupt traffic flow, and require little supervision by authorities;

unlike signs on newspaper racks placed in the middle of sidewalks, posters do not impede pedestrian traffic; as opposed to sound trucks blaring their message down city streets, the silent poster does not present an inescapable nuisance; and unlike large banners stretched across thoroughfares, political signs are less likely to distract drivers.

7. There Exist No Equally Effective and Economic Alternatives to Posting Signs on Appropriate Public Property.

a. Political Signs Play a Unique and Essential Role In Campaigns.

The political sign is recognized by courts and commentators as playing a special role in the electoral process.

> "[M]eans of political communication are not entirely fungible; political posters do have unique advantages. Their use may be localized to a degree that radio and newspaper advertising may not. With the exception of handbills, they are the least expensive means by which a candidate may achieve name recognition among voters in a local election." *Baldwin v. Redwood City, supra,* 540 F.2d at 1368.

In a cogent article examining the issues raised in this case, Professor Stone predicted the Court would strike down a blanket prohibition against political signs in public places largely because of their special function:

> "The use of . . . posters and signs as a method of disseminating information on public issues has gained wide acceptance largely because of its unique similarity, in functional terms, to the use of newspaper, radio and television 'advertorials.' Unlike 'advertorials,' and unlike most other forms of communication, the use of . . . signs [and] posters . . . does not require the

> physical presence of the 'speaker,' thereby enabling him to 'speak' in several places at the same time. It is a relatively inexpensive, highly convenient, and markedly effective outlet for the promulgation of ideas and information by persons who do not have access themselves to more traditional media facilities." Stone, "Fora Americana: Speech in Public Places," *The Supreme Court Review* (Univ. of Chicago Press 1974) at 257.

Political posters lay the foundation for election campaigns, particularly those waged by unknowns, as they establish name recognition among the electorate. This stage is essential before the issues advanced by the candidate can be expanded by other means, such as radio and television ads and debates. The voter must know who is running before he cares what the candidates have to say.

Additionally, a political sign campaign is an inexpensive way to test the vote-getting ability of a candidate. If after a vigorous sign campaign, polls show that the candidate has not made any substantial impact on the electorate, he may choose to terminate the campaign and avoid expenses for the more costly forms of publication that would otherwise follow. (J.A. 149.)

Finally, campaign signs serve not only to advertise the candidates, but the impending election itself. They stir public interest and reduce the likelihood of "closed" elections that favor incumbents. Campaign signs also act to highlight local contests that might otherwise be lost among the more glamorous races for national offices. (J.A. 149-150.)

b. The Effectiveness of Political Signs Depends Substantially on Access to Public Property.

The appellees are entitled not only to communicate their support of a political candidate but to do so effectively. *Buckley v. Valeo,* 424 U.S. 1 (1976); *Thomas v. Collins,* 323 U.S. 516 (1945). The public has a corresponding right to receive the message. *Anderson v. Celebresse,* — U.S. —, 103 S.Ct. 1564 (1983); *Red Lion Broadcasting Co. v. FCC,* 395 U.S. 367 (1969).

Los Angeles would relegate appellees and other candidates to posting signs on their automobiles, to hold them while walking the streets, and to posting them on private property. (A.B. 25, 26.) The inadequacy of these suggestions is self-apparent. Candidates and their supporters may not own automobiles or wish to drive them caravan-like through town because to do so would not only be environmentally irresponsible, but also ineffective. Los Angeles fails to explain how signs placed on automobiles or waved by a throng of volunteers on crowded sidewalks present less a threat to safety and aesthetics than stationary signs; the reverse would appear to be true.

Posting a sign on private property naturally requires the owner's permission. A candidate cannot expect to obtain permission from a property owner who does not support him or his cause. He may not be able to identify the owner of unoccupied properties or, having identified the owner, he may find it difficult to actually locate him to ask permission. Should the candidate and his volunteers be unable to campaign during the business hours, they will find it difficult to reach the owners of business

establishments to persuade them to allow signs on their properties.

Having prevailed on the owner to post his sign, a candidate has no assurance the owner will not quietly remove the sign upon the candidate's departure. The time, effort, and expense of securing permission to post on private property negates the inherent efficiency of a political sign campaign.

An equally important consideration is that use of public property preserves anonymity, which is often essential to the free exercise of First Amendment rights. In striking down another Los Angeles ordinance, which required leafleteers to identify themselves on distributed publications, the Court through Justice Black observed that, as in the case of the Federalist Papers,

> "[I]dentification and fear of reprisal might deter perfectly peaceful discussion of public matters of importance."
>
> *Talley v. California,* 363 U.S. 60, 65 (1960).

Homeowners may be reluctant to post a sign for an unpopular candidate or cause on their property because they may fear disapproval by their neighbors or precinct bosses. Shop owners may not wish to mix business with politics, either on general principles or in the apprehension that to do so would alienate customers or incite unwanted debate among them on the showroom floor. The availability of public posting places obviates these problems.

B. Section 28.04 Constitutes an Unlawful Discrimination in Favor of Those Who are Allowed to Post Other Signs on Public Property and Those Who Own Private Property.

Apart from constituting an overbroad restriction against First Amendment rights, Section 28.04 also runs afoul of the Equal Protection Clause because (1) it prohibits political signs where others are allowed and (2) consigns political posters to private property, thereby giving advantages to both property owners as a class, and in particular to those owning property on which signs are highly visible.

1. Los Angeles Permits the Posting of Other Signs in Public Areas.

The Constitution prohibits the grant of special privileges to one group at the exclusion of others unless the discrimination is grounded on a reasonable foundation. *Police Department v. Mosley*, 408 U.S. 92 (1972). Where First Amendment questions are raised by the discriminatory practice, the city has the burden of proving it reasonable. *Id.*

As demonstrated above, Los Angeles permits numerous types of signs to be posted on or over public property. The city does not even attempt to defend these signs as aesthetically pleasing; it is plain that in fact commercial signs placed in large numbers on newsracks and bus shelters constitute a permanent source of "visual clutter."

Los Angeles defends the discrimination against political signs on the basis that before installing signs in

sidewalks or stretching banners over streets the applicant must first obtain a permit thereby enabling the city to monitor the sign and construction of the signs. (A.B. 11-12.) Los Angeles could likewise impose reasonable permit requirements for political signs and retain control over their placement. *Murdock v. Pennsylvania,* 319 U.S. 105 (1943); *Baldwin v. Redwood City, supra,* 540 F.2d 1360, 1372. Los Angeles claims that the permanent and somewhat gaudy signs permitted on the otherwise graceful columns of City Hall itself (see J.A. 97) "merely identify the tenants of a commercial mall." (A.B. 12.) Likewise, political signs merely identify candidates running for political office. Lacking a reasonable basis for distinguishing between commercial and political signs on environmental grounds, the ordinance is constitutionally defective. *Metromedia, supra,* 453 U.S. at 510-511.

2. The Ordinance Discriminates in Favor of Property Owners to the Prejudice of Non-property Owners.

The restriction of freedom of expression to private property results in an unavoidable discrimination against those who wish to demonstrate their support of laws that may adversely affect the vested interests of property owners. It can be fairly said that a significant number of the most hotly contested political issues in a democratic society deal either directly or indirectly with the taxing and use of real estate. Property taxes and zoning questions are the most obvious. Assume that a group wishes to generate support for an initiative measure calling for a substantial increase in property taxes to pay for schools, or condemning a choice parcel of privately owned prop-

erty for a low income housing project. It cannot be seriously argued that an ordinance confining the use of political signs to private property will not have a substantial detrimental effect on the proponents.

The full extent to which non property owners are disadvantaged becomes apparent with the realization that over 72% of those residing in the central district of Los Angeles rent their dwelling units. (A. 6, et seq.)[23]

3. The Ordinance Creates a De Facto Advantage in Favor of Candidates Having Access to Private Property Located Near Public Centers.

The Los Angeles road map reveals a complex network of freeways emanating from all points in Southern California and converging at the downtown hub. (A. 7.) A political poster planted in a remote residential lawn might attract the attention of drivers in the slow inbound lane of the freeway as they pass to work in the morning. However, a sign posted on a highrise condominium near the civic center will draw the attention of drivers who commute from Orange County, Pasadena and the San Fernando Valley. The first sign may be seen by 100,000 people, the second by 3,000,000.

Given the strategic advantage of the downtown area for sign posting, those owning property there enjoy a great advantage under the present ordinance. The price of commercial real estate in large cities almost universally

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[23]Rental units exceed owner occupied dwellings in three of the city's four major geographic areas. (Id.)

increases with proximity to the financial district and exclusive shopping districts. Large portions of entire blocks are owned by multi-national corporations such as Bank of America, Exxon, and Prudential. In the well-trafficked blocks of the civic center, one is left with virtually nothing but privately owned skyscrapers on the one hand and publicly owned streets and sidewalks on the other. It is safe to say that the interests and political beliefs of people living and owning property in the neighborhoods are not entirely consonent with those who conduct business in the boardrooms of large corporations. It is precisely for this reason that the public streets have been opened to all members of the public body for the exercise of public debate. *Hague v. CIO, supra,* 307 U.S. 496. To limit free expression to property owners is to automatically favor those owners whose properties are situated in areas with the highest concentration of traffic. In short, most private property is simply too private to serve public purposes.

MOOTNESS

Los Angeles recently added Section 28.04.1 to its Municipal Code. Although the new enactment is difficult to read in harmony with Section 28.04, it apparently reflects a legislative attempt to distinguish public fixtures whose functions are actually threatened by political signs from those that are not. To that extent, it comes closer to a constitutionally acceptable balance of interest. However, because Los Angeles would revert to enforcing Section 28.04, but for the Ninth Circuit decision under review here, the appellees must concur that this

case is not moot. *United States v. W. T. Grant Co.*, 345 U.S. 629 (1953).

CONCLUSION

For the reasons given above, appellees respectfully request that the judgment of the Ninth Circuit be affirmed and that appellees be awarded reasonable attorneys' fees on appeal pursuant to 42 U.S.C. 1988.

Respectfully submitted,

WAYNE S. CANTERBURY
CANTERBURY, RAUB & GREENTHAL
Attorneys for Appellees

(11) All subdivision sign permits shall be reviewed annually.

(12) Subdivision signs, giving direction to or advertising the opening of any subdivision or similar installation, may be erected in residential and other districts when such signs are in compliance with the conditions set forth in this subsection and approved by the City Planner.

(b) *Political signs.*

(1) *Permission to use.* Notwithstanding anything to the contrary contained in this article, political signs shall be permitted in the City subject to the terms and conditions set forth in this subsection, which terms and conditions shall apply only to outdoor political signs.

(2) *Political sign defined.* "Political sign" shall mean any sign which is designed to influence the action of the voters for the passage or defeat of a measure appearing on the ballot at any national, State, or local election or which is designed to influence the action of the voters for the election or defeat of a candidate for nomination or election to any public office at any national, State, or local election.

(3) *Registration of responsible parties for signs.* Any political campaign committee or candidate who utilizes political signs shall register the name of a person within the political committee or the candidate himself who shall be responsible for the political signs erected on behalf of and by such committee or candidate, their placement, and their maintenance within the City, and such person shall be considered the "responsible party". Such responsible party shall complete a registration form provided by the City, giving his name and address and where he can be contacted, and shall agree to become responsible for such political signs.

(4) *Location, time of erection, and type.* Political signs are hereby permitted in any zone without the prior approval of the Commission or Council. However, any such sign shall not:

(i) Be permanent or lighted;

(ii) Be erected earlier than sixty (60) days before the election to which it relates;

(iii) Be attached to any utility pole, fence, tree, or other vegetation or upon any public right-of-way;

(iv) Be so situated that the face thereof is specifically oriented for viewing toward any freeway right-of-way;

(v) Be erected in such a manner that it will or reasonably may be expected to interfere with, obstruct, confuse, or mislead traffic or be so situated as to endanger the health, safety, or welfare of people or endanger property;

SEC. 62.132. STREET BANNERS:

(a) Definitions.

"Street Banner." Any pennant, streamer, flag, sign, picture, figure or other object, regardless of the material of which it is made, which is suspended or otherwise displayed over any public street, way or place, designed for decoration or advertisement, or to attract the attention of passersby; except, however, official warning devices, public service facilities, street lights and the like. The term shall not include signs the installation and maintenance of which is regulated by Article I, Chapter 9 of this Code.

2. "Each Installation." Each wire or rope from which one or more street banners are suspended shall be deemed to be one "installation."

(b) Permit Required. No person shall install or maintain any street banner without a permit therefor from the Board of Public Works. A separate permit shall be required for each location, but all banners suspended in one city block, or in a number of contiguous city blocks, by one permittee, shall be deemed to be at the same location.

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[Subparts (c) through (q) deleted]

FACTS

AT A GLANCE

Prepared by
Los Angeles City Department of City Planning
Data Support Unit

May 1982

Physical Characteristics
(1980 data unless noted)

City Land Area (1977)	465 sq. miles
Streets & Roads	6,447 miles
Freeways, Expressways & Highways (1975)	214.7 miles

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Population Characteristics
(1980 Census)

	Number	%
Males	1,451,668	48.93
Females	1,515,182	51.07

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Ethnic Composition

	1970		1980	
	Number	%	Number	%
White	1,680,558	60.1	1,432,735	48.3
Spanish	514,927	18.4	815,974	27.5
Black	486,584	17.4	504,691	17.0
Asian	104,284	3.7	196,002	6.6
American Indian	9,280	.3	16,594	.6

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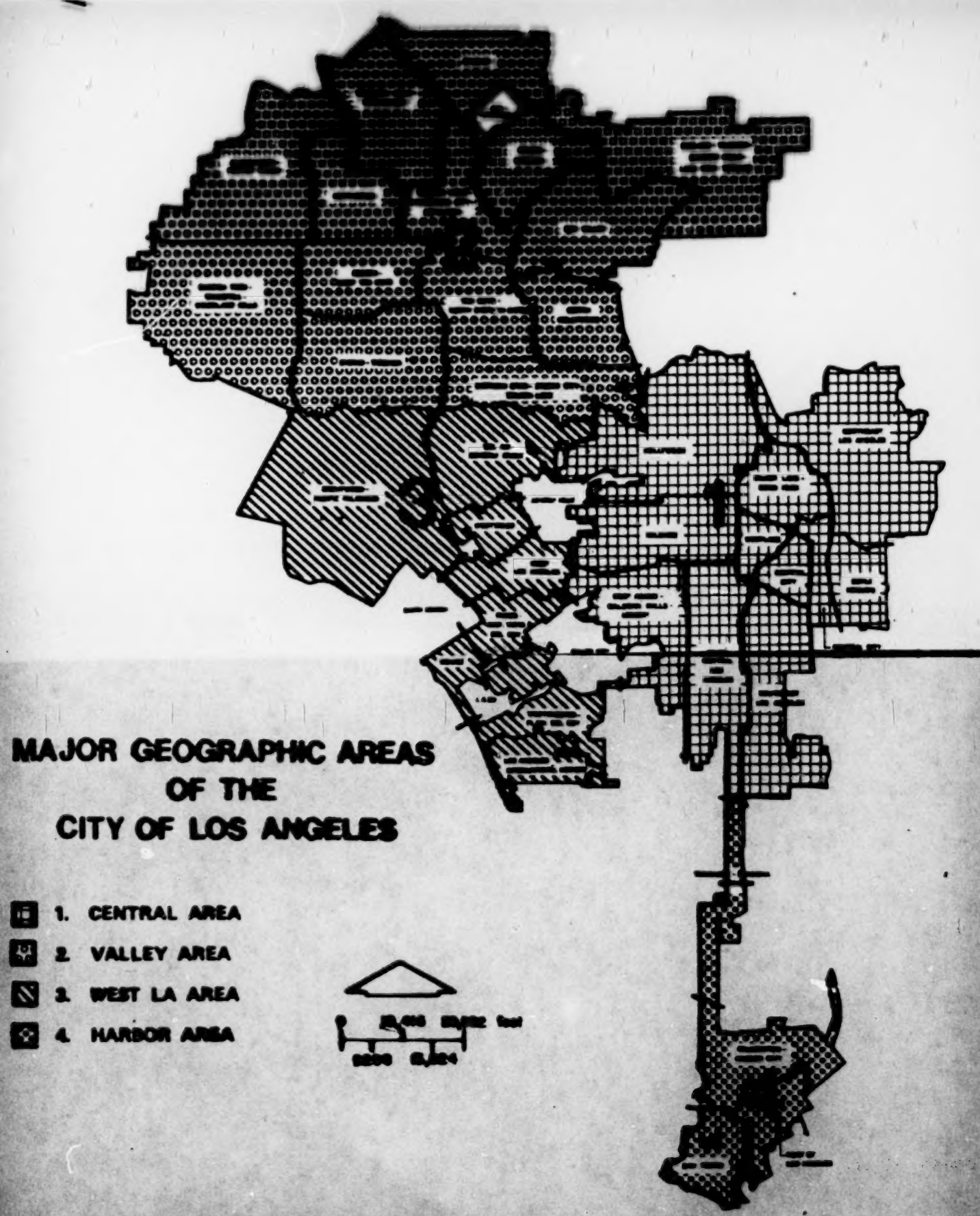

PREPARED BY THE DATA SUPPORT UNIT & THE GRAPHICS SECTION LOS ANGELES CITY PLANNING DEPARTMENT

02/18/82

SELECTED 1980 CENSUS DATA FOR
GEOGRAPHIC AREA 1

• • •

HOUSING

Variable Name	Number	Percent
Year-Round Housing Units	566449	100.00
Occupied	539660	95.27
Owner Occupied	150204	
Owner Occupied Single Family Houses	124363	
Renter Occupied	389456	
Unoccupied	26789	4.73

• • •

02/18/82

SELECTED 1980 CENSUS DATA FOR
GEOGRAPHIC AREA 2

• • •

HOUSING

Variable Name	Number	Percent
Year-Round Housing Units	398073	100.00
Occupied	382023	95.97
Owner Occupied	213932	
Owner Occupied Single Family Houses	183023	
Renter Occupied	168091	
Unoccupied	16050	4.03

• • •

02/18/82

SELECTED 1980 CENSUS DATA FOR
GEOGRAPHIC AREA 3

• • •

HOUSING

Variable Name	Number	Percent
Year-Round Housing Units	169189	100.00
Occupied	160519	94.88
Owner Occupied	68454	
Owner Occupied Single Family Houses	54179	
Renter Occupied	92065	
Unoccupied	8670	5.12

• • •

02/18/82

SELECTED 1980 CENSUS DATA FOR
GEOGRAPHIC AREA 4

• • •

HOUSING

Variable Name	Number	Percent
Year-Around Housing Units	55000	100.00
Occupied	52827	96.05
Owner Occupied	24705	
Owner Occupied Single Family Houses	20099	
Renter Occupied	28122	
Unoccupied	2173	3.95

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Pacific
Ocean
Santa Monica
Los Angeles
Pasadena
Long Beach
Burbank
Glendale
Monterey Park
Alhambra
San Gabriel
Pomona
Arcadia
Glendora
Azusa
Covina
West Covina
Walnut
Industry
Whittier
Norwalk
Downey
Bellflower
Lakewood
Gardena
Torrance
Redondo Beach
Manhattan Beach
Hawthorne
Inglewood
Culver City
Marina
Santa Monica
Ventura
Route 1
Route 2
Route 5
Route 10
Route 14
Route 19
Route 22
Route 23
Route 27
Route 30
Route 38
Route 39
Route 57
Route 60
Route 71
Route 91
Route 101
Route 118
Route 134
Route 210
Route 605
Route 710
Route 1
Route 2
Route 5
Route 10
Route 14
Route 19
Route 22
Route 23
Route 27
Route 30
Route 38
Route 39
Route 57
Route 60
Route 71
Route 91
Route 101
Route 118
Route 134
Route 210
Route 605
Route 710
Santa Ana
Fwy
Hollywood
Golden State
Harbor
Long Beach
Pasadena
Foothill
Pomona
San Bernardino
Riverside
Orange
Ventura
Santa Monica
Hollywood
Golden State
Harbor
Long Beach
Pasadena
Foothill
Pomona
San Bernardino
Riverside
Orange
Ventura
Santa Ana
Fwy
DISTRICT 7
HIGHWAY SYSTEM
FEB. 1982
Legend
LEGISLATIVE AND SIGN ROUTE NUMBERS
INTERSTATE ROUTE
US SIGN ROUTE
STATE SIGN ROUTE
FREEWAYS
COMPLETED
UNDER CONSTRUCTION
BUDGETED
ROUTE ADOPTED
ROUTE UNDER STUDY (Exact Location Not Determined)
ROUTE NOT ADOPTED (Location Not Determined)
EXPRESSWAY
CONVENTIONAL HIGHWAYS
2 1 0 2 4 6
SCALE IN MILES
LOS ANGELES COUNTY